Thanaraj a/l Manikam & Ors v Lower Perak Tamil Co-operative Society

HIGH COURT (IPOH) — CIVIL SUIT NO 22-168-1983
KANG HWEE GEE J
7 SEPTEMBER 1996

Civil Procedure *— Preliminary objection — Whether preliminary objecton must be pleaded in statement of defence — Procedure in raising preliminary objection — Rules of the High Court 1980 O 33 r 2*

Civil Procedure *— Jurisdiction — Action by members of co-operative society — Whether dispute was one touching business of a co-operative society — Whether claim to be referred to Registrar-General of Co-operative Societies for decision — Co-operative Societies Act 1993 s 82(1)*

Unincorporated Associations *— Societies — Co-operative societies — Dispute between member and co-operative society — Whether plaintiffs' claim constitutes disputes touching business of society — Whether claim to be referred to Registrar-General of Co-operative Societies for decision — Co-operative Societies Act 1993 s 82(1)*

Words and Phrases *— 'Touching the business of a society' — Co-operative Societies Act 1993 s 82(1)*

In their statement of claim, the plaintiffs alleged that by memoranda of transfers made between them and the defendant co-operative society, the defendant sold to each of the plaintiffs a piece of land. After executing the memoranda of transfers, the plaintiffs alleged that the defendant had failed to complete the sale or to deliver to the plaintiffs the title deeds and the memoranda of transfers to enable them to effect registration of land into their respective names despite their requests to do so. It was further alleged that after executing the memoranda of transfers the defendants were merely holding the lands as bare trustees of the plaintiffs. The defendant argued that that the plaintiffs being members of the defendant co-operative society were bound by the rules and regulations of the society which was registered under the Co-operative Societies Ordinance 1948 (now the Co-operative Societies Act 1993) ('the Act')). The defendant denied that they had sold the respective lots of land to the plaintiffs and pleaded that the purported execution of the transfer of the lots were obtained by the plaintiffs by fraud. The plaintiffs sought the following from court, namely (i) a declaration that the defendant was holding the said seven properties under the respective titles as trustee for the plaintiffs; and (ii) that the defendant howsoever do forthwith deliver to the respective plaintiffs the said title deeds and memoranda of transfers of the said lands. Counsel for the defendant raised a preliminary question of law, ie whether the plaintiffs' claim should not be allowed to proceed by reason that the plaintiffs, being members of the defendant co-operative society, should have acted under s 82(1) of the Act to refer their claims to the Registrar-General of Co-operative Societies for decision as the plaintiff's claim were allegedly 'disputes touching the business of the registered society'.

Held, dismissing the plaintiffs' claim with costs:

(1) Ideally the procedure for the defendant to adopt was to plead the preliminary issue in their statement of defence under O 18 r 11 of the Rules of the High Court ('the RHC 1980'). He could then follow up by an application under O 33 r 2 of the RHC 1980 and if it appears to the court that the decision on the preliminary issue would substantially dispose of the cause or matter or render the trial of the cause of matter unnecessary, then the court may act under O 33 r 5 to dismiss the plaintiffs' action. Under O 33 r 2 however, the defendant need not plead the issue of law in his statement of defence and a formal application need not be made (see p 88H–I).

(2) The preliminary issue of law raised in this instance would not require the ascertainment of any facts beyond those that appear in the pleadings and a decision on the issue if favourable to the defence would render the trial unnecessary which could only lead to much savings and costs. The defendant therefore should be allowed to proceed with their application (see pp 88I–89A).

(3) Section 82 of the Act seeks to restrict members of a co-operative society from seeking redress in a civil court in their domestic disputes and cannot be equated with the waiver of the right of a party under s 6 of the Arbiration Act 1952 to submit to arbitration. The fact that the defendant in the present case had taken a step in the proceedings by entering their appearance would not alter the dictates of the legislature prohibiting an action from being filed. The plaintiffs' counsel's submission on this point therefore was without merit (see p 89B–C).

(4) The words 'touching the business of a society' must be given their full import, bearing in mind the object of the legislation. The dictionary meaning of the word 'touching' indicated that the dispute need not directly arise out of the business of the society, but that it is enough that it should have reference or relation to or concern the business of the society. The word 'touching' was clearly not intended to restrict the meaning of the word 'business'; it was designed to enlarge its scope. Similarly, the word 'business' is not used in a narrow sense (see p 89D–G); *M Arulandan v Malaysian Co-operative Insurance Society Ltd* [1987] 1 MLJ 485 and *Madhava Rao v Surya Rao* AIR 1954 Mad 103 followed. Given the wide meaning that has been ascribed to the term, the disputes that arose from the sale and purchase of the lands by the plaintiff members from the defendant co-operative society were disputes touching on the business of the society. The plaintiffs' claim thus could not proceed in this court (see p 89H–I).

[Bahasa Malaysia summary

Dalam pernyataan tuntutan mereka plaintif telah menyatakan bahawa melalui beberapa memoranda pindahmilik yang dibuat di antara mereka dan defendan (suatu persatuan koperasi), defendan telah

menjual kepada setiap plaintif sebidang tanah. Setelah menyempurnakan memoranda pindahmilik tersebut, plaintif mendakwa bahawa defendan telah gagal menyempurnakan jualan tersebut ataupun untuk menghantar-serah kepada plaintif suratikatan hakmilik dan memoranda pindahmilik tersebut untuk membolehkan mereka mendaftar tanah-tanah tersebut dalam nama mereka walaupun terdapat permintaan untuk berbuat demikian. Plaintif selanjutnya menyatakan lagi bahawa setelah menyempurnakan memoranda pindahmilik, defendan hanya memegang tanah tersebut sebagai 'bare trustee' untuk plaintif. Defendan telah berhujah bahawa plaintif adalah ahli persatuan koperasi defendan dan mereka tertakluk kepada peraturan dan kaedah persatuan tersebut yang didaftarkan di bawah Ordinan Persatuan Koperasi 1948 (sekarang Akta Persatuan Koperasi 1993) ('Akta tersebut')). Defendan menafikan yang ia telah menjual tanah-tanah tersebut kepada plaintif dan telah membuat pliding bahawa perlaksanaan pindahmilik tanah-tanah tersebut telah didapati melalui fraud. Plaintif telah memohon dari mahkamah seperti yang berikut, iaitu (i) suatu deklarasi bahawa defendan memegang tujuh harta tersebut di bawah hakmilik-hakmilik berkenaan sebagai pemegang amanah untuk plaintif; dan (ii) bahawa defendan mesti, dengan segera, menghantar-serah kepada plaintif berkenaan semua suratikatan hakmilik dan memoranda pindahmilik tanah-tanah tersebut. Peguambela bagi pihak defendan telah menimbulkan suatu persoalan undang-undang sama ada tuntutan plaintif patut dihalang atas sebab bahawa plaintif sebagai ahli persatuan koperasi defendan sepatutnya bertindak di bawah s 82(1) Akta tersebut dan merujuk tuntutan mereka kepada Ketua Pendaftar Persatuan Koperasi untuk diputuskan oleh kerana tuntutan plaintif adalah 'pertikaian yang menyentuh urusan persatuan berdaftar tersebut'.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Sepatutnya prosedur yang perlu diikuti oleh defendan ialah untuk menyatakan isu permulaan tersebut dalam pernyataan pembelaannya di bawah A 18 k 11 Kaedah-Kaedah Mahkamah Tinggi ('KMT 1980'). Kemudian defendan boleh mengikutinya dengan suatu permohonan di bawah A 33 k 2 KMT 1980 dan sekiranya mahkamah berpendapat yang keputusan isu permulaan tersebut akan dengan jelas menyelesaikan kausa atau perkara tersebut atau menjadikan perbicaraan tersebut tidak perlu lagi, maka mahkamah boleh bertindak di bawah A 33 k 5 untuk menolak tindakan plaintif. Walau bagaimanapun, mengikut A 33 k 2 defendan tidak perlu membuat pliding tentang isu undang-undang tersebut dalam pernyataan pembelaannya dan suatu permohonan yang formal tidak perlu dibuat (lihat ms 88H–I).

(2) Isu undang-undang permulaan yang dibangkitkan dalam kes ini tidak memerlukan penentuan sebarang fakta lain melainkan fakta-fakta yang terdapat dalam pliding dan suatu keputusan di atas isu tersebut, sekiranya memihak defendan, akan menjadikan

perbicaraan tersebut tidak perlu lagi dan ini akan menjimatkan perbelanjaan dan kos. Maka defendan patut dibenarkan meneruskan permohonannya (lihat ms 88I–89A).

(3) Seksyen 82 Akta tersebut berniat melarang ahli-ahli persatuan koperasi tersebut dari memohon tebus rugi dalam mahkamah sivil dalam pertikaian domestik mereka dan tidak boleh disamakan dengan penepian hak sesuatu pihak di bawah s 6 Akta Timbangtara 1952 untuk merujuk kepada timbangtara. Fakta bahawa defendan dalam kes ini telah mengambil langkah dalam prosiding ini dengan memasukkan kehadiran tidak akan mengubah kehendak badan perundangan dalam melarang suatu tindakan daripada difailkan. Oleh yang demikian hujah peguam bagi pihak plaintif dalam perkara ini tidak bermerit (lihat ms 89B–C).

(4) Perkataan-perkataan 'menyentuh urusan sebuah persatuan' patut diberikan maksud sepenuhnya, dengan mengambil kira objek perundangan. Makna kamus perkataan 'menyentuh' menunjukkan bahawa pertikaian tersbeut tidak semestinya timbul akibat secara langsung daripada urusan persatuan itu, tetapi ianya adalah mencukupi bahawa ianya adalah merujuk ataupun berkaitan dengan urusan persatuan itu. Perkataan 'menyentuh' secara jelas tidak bertujuan untuk menghadkan makna perkataan 'urusan'; padahal ia telah diniatkan untuk meluaskan lingkungannya. Dalam keadaan yang sama perkataan 'urusan' tidak digunakan dalam konteks yang sempit (lihat ms 89D–G); *M Arulandan v Malaysian Co-operative Insurance Society Ltd* [1987] 1 MLJ 485 dan *Madhava Rao v Surya Rao* AIR 1954 Mad 103 diikut. Memandangkan bahawa makna yang luas telah diberikan kepada perkataan-perkataan tersebut, maka pertikaian yang berpunca daripada jual-beli tanah di antara plaintif dan defendan adalah pertikaian yang menyentuh urusan persatuan tersebut. Tuntutan plaintif oleh itu tidak boleh diteruskan di dalam mahkamah ini (lihat ms 89H–I).]

Notes

For cases on raising a preliminary objection, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2773–2774.

Cases referred to

M Arulandan v Malaysian Co-operative Insurance Society Ltd [1987] 1 MLJ 485 (refd)

Madhava Rao v Surya Rao AIR 1954 Mad 103 (folld)

Legislation referred to:

Arbitration Act 1952 s 6

Co-operative Societies Act 1993 ss 81, 82

Rules of the High Court 1980 O 18 r 11, O 33 rr 2, 5

R Jegatheesa (RJ Esa & Co) for the plaintiffs. A
S Athithan (Thevin Chandran & Wong) for the defendants.

Kang Hwee Gee J: In their statement of claim the plaintiffs alleged that by the memoranda of transfers made between the plaintiffs and the defendant co-operative society, the defendant sold to each of the plaintiffs B a piece of land for the respective consideration as follows:

(1)	Thanaraj a/l Manikam	HS (D)LP 364/73 Lot 11180 Mukim Durian Sebatang	RM1,687 C
(2)	Ramalingam a/l Supramaniam	HS (D)LP 356/73 Lot 11172 Mukim Durian Sebatang	RM1,162.50 D
(3)	Sokiah a/l Veerappan	HS (D)LP 363/73 Lot 11179 Mukim Durian Sebatang	RM1,687 E
(4)	Suseala @ Ramayee a/p Sangaran Pillai	HS (D)LP 357/73 Lot 11173 Mukim Durian Sebatang	RM1,212.50 F
(5)	Lakshamanan a/l Madhavan	i) HS (D)LP 365/73 Lot 11181 Mukim Durian 8ebatang	RM1,162
		ii) HS (D)LP366/73 Lot 11182 Mukim Durian	RM1,196.25 G
(6)	Kasthuri Venkataswamy d/o S Krishnaswamy	HS (D)LP 360/73 Lot 11176 Mukim Durian Sebatang	RM3,992.50 H

After executing the memoranda of transfers, the plaintiffs alleged that the defendant had failed to complete the sale or to deliver to the plaintiffs the I title deeds and the memoranda of transfers to enable them to effect registration of land into their respective names despite their requests to do so.

A It was further alleged that after executing the memoranda of transfers the defendants were merely holding the lands as bare trustees of the plaintiffs.

In the event, the plaintiffs are seeking from court:

B (1) a declaration that the defendant holds the said seven properties held under the respective titles as trustee for the plantiffs;

(2) that the defendant whether by itself or by its officers or its servants or agents or other otherwise howsoever, do forthwith deliver to the respective plaintiffs or to whom they may appoint the said title deeds and memoranda of transfers of the said lands.

C It would appear from the statement of defence that the dispute between the parties was not a simple case of a seller refusing to complete their obligation to sell land to the purchasers who had paid the purchase price as the plaintiffs' statement shows. The defendant's statement of defence disclosed that the plaintiffs were in fact members of the defendant D co-operative society and as such were bound by the rules and regulations of the society which was registered under the Co-operative Societies Ordinance 1948 (now the Co-operative Societies Act 1993) ('the Act').

While denying that they had sold the respective lots of land to the plaintiffs as alleged, they pleaded in the alternative, that the purported E execution of the transfer of the lots were obtained by the plaintiffs by fraud through some form of collusion with the committee members of the defendant co-operative society. The particulars in respect of each plaintiff was pleaded in para 5 of the statement of defence but for the purpose of this judgment it is not necessary for me to set out the counter allegations in detail.

F

A preliminary issue of law

At the commencement of hearing of this suit counsel for the defendant made an application to try a preliminary question of law under O 33 r 2 of the Rules of the High Court 1980 ('the RHC 1980') as to whether the G plaintiffs' claim should not be allowed to proceed by reason that the plaintiffs, being members of the defendant co-operative society, should have acted under s 82(1) of the Act (formerly s 49(1) of the Co-operative Societies Ordinance 1948) to refer their claims to the Registrar-General of Co-operative Societies for decision.

H For ease of reference I shall quote in extenso the provisions of s 82(1) of the Act which reads as follows:

> 82 (1) If a dispute touching the constitutions, by-laws, election of officers, conduct of general meetings, management or business of a registered society arises:
>
> I (a) among members, past members and persons claiming through members, past members and deceased members;
>
> (b) between a member, past member, or person claiming through a member, past member or deceased member, and the society, its board, or any officer of the society;
>
> (c) between the society or its board and any officer of the society; or

(d) between the society and any other registered society, A

such dispute shall be referred to the Registrar-General for decision.

The plaintiffs' claim, counsel submitted, were 'disputes touching the business of the registered society' which fell squarely within the provision of s 82(1)(b) of the Act. Under s 82(3) of the Act the Registrar-General on receipt of a reference aforementioned may: B

(1) decide the dispute himself;

(2) refer the dispute to an arbitrator or arbitrators for disposal; or

(3) require the parties concerned to refer the dispute to the court.

The plaintiffs' claim, it was submitted, could only be pursued in this court C if the Registrar-General decides under proviso (c) of s 82(1) and under s 82(5) of Act that any decisions adjudicated upon by the registrar shall be final and shall not be called into question in any civil court.

Counsel for the plaintiffs did not deny that the plaintiffs were members of the society. Neither did he appear to seriously deny that the plaintiffs' D claim constitutes a dispute touching the business of the defendant society, but sought to oppose the preliminary point raised by counsel for the defendant on the grounds that:

(1) the defendant should have raised this point in their statement of defence. The court cannot deal with issues which are not pleaded; E and

(2) the defendant having entered their appearance and filed their statement of defence had in fact taken a step in the proceeding and had therefore submitted to the jurisdiction of the court. It was no longer open to him to require the plaintiffs to refer the dispute to the Registrar-General. The court, he submitted, should apply the principle F which is normally applied in contracts which contain an arbitration clause to rule in favour of the plaintiffs. Further, he submitted an arbitrator does not have the power to decide on any issues on fraud — the same applies to the Registrar-General of Co-operative Societies as in the present case. G

The first ground

Ideally, the procedure for the defendant to adopt was to plead the isssue in their statement of defence under O 18 r 11 of the RHC 1980. He could then follow up by an application under O 33 r 2 and if it appears to the H court that the decision on the preliminary issue substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, the court may then act under O 33 r 5 to dismiss the plaintiffs' action (see *Supreme Court Practice* 1985 18/11/1 at p 276). Under O 33 r 2 however, the defendant need not plead the issue of law in his statement of defence and a formal application need not be made. I

It is clear to me firstly, that the issue of law raised in this instance would not require the ascertainment of any facts beyond those that appear in the pleadings and secondly that a decision on the issue if favourable to the defence would render the trial unnecessary which could only lead to

much savings and costs. I therefore fail to see why the defendant should not be allowed to proceed with their application.

The second ground

It is clear to me that s 82 of the Act which seeks to restrict members of a co-operative society from seeking redress in a civil court in their domestic disputes cannot be equated with the waiver of the right of a party under s 6 of the Arbitration Act 1952 to submit to arbitration. The fact that the defendant in the present case had taken a step in the proceedings by entering his appearance would not alter the dictates of the legislature prohibiting an action from being filed. I must accordingly rule that the plaintiffs' counsel's submission on this point is without merit.

Whether the plaintiffs' claim constitutes disputes touching the business of a society?

The words 'touching the business of a society' was considered in the Supreme Court case of *M Arulandan v Malaysian Co-operative Insurance Society Ltd* [1987] 1 MLJ 485 which had to decide on whether a disciplinary action brought against the appellant by the board of inquiry instituted by the chief executive of the society fell within the ambit of s 49(1) of the repealed Co-operative Societies Act 1948, the same wordings of which are now included in the present s 82(1) of the Act.

It was held in that case that the appellant could only bring an action in court if the Registrar-General required the dispute to be referred to court under s 49(1). The court adopted the wide interpretation ascribed to the phrase in the Indian case of *Madhava Rao v Surya Rao* AIR 1954 Mad 103 (the same words of which appeared in certain parts of the Madras Co-operative Act) which reads as follows:

> The words 'touching the business of a society' must be given their full import, bearing in mind the object of the legislation. Taking the dictionary meaning of the word 'touching' it indicates that the dispute need not directly arise out of the business of the society, but that it is enough that it should have reference or relation to or concern the business of the society. The word 'touching' was clearly not intended to restrict the meaning of the word business; at was designed to enlarge its scope. Similarly, the word 'business' is not used in a narrow sense.

It is the province of the legislature to enact statutes, and of the courts to construe the statutes which the legislature has enacted. It is clear to me that given the wide meaning that has been ascribed to the term by the Supreme Court in the case cited, the disputes that arose from the sale and purchase of the lands by the plaintiff members from the defendant co-operative society were disputes touching on the business of the society.

To allow the plaintiffs' claim to be adjudicated in this court would be against the clear purport and intent of s 82(1) of the Act. In the event, I would have to rule in favour of the defendant.

Claim dismissed.

Reported by Kanesh Sundrum